



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued
Délivré par voie électronique : 15-Oct-2019
Toronto

SHANAAZ GOKOOL

Plaintiff

and

DYING WITH DIGNITY CANADA

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
393 University Avenue, 10th Floor
Toronto, Ontario M5G 1E6

TO: **DYING WITH DIGNITY CANADA**
55 Eglinton Avenue East, Suite 802
Toronto, Ontario M4P 1G8

Defendant

CLAIM

1. The plaintiff claims:

- (a) damages for wrongful dismissal in the amount of \$500,000;
- (b) damages for injury to dignity, feelings and self-respect arising from systemic discrimination and reprisal in the amount of \$250,000;
- (c) bad faith/moral/punitive damages of \$1,000,000;
- (d) special damages in an amount to be specified prior to trial;
- (e) pre- and post-judgement interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (f) the costs of this proceeding on a full indemnity basis, plus all applicable taxes; and
- (g) such further and other relief as this Honourable Court deems just.

The Parties

2. The plaintiff, Shanaaz Gokool (**“Ms. Gokool”**), is a 50 year old Canadian woman who emigrated from Trinidad and Tobago as a toddler. She holds a B.A. in Political Science and Human Rights and Equity Studies and has had a long career advancing human rights. Between February 15, 2016 and July 23, 2019, Ms. Gokool was the CEO of the defendant, Dying with Dignity Canada (**“DWDC”**).

3. DWDC is a national human rights charity committed to improving the quality of dying, protecting end of life rights, helping Canadians avoid unwanted suffering, and advancing the

Charter-protected right to medical assistance in dying (MAID). As at the date of Ms. Gokool's termination on July 23, 2019, DWDC's Board of Directors was composed of the following individuals: James Cowan (Chair), Susan Desjardins, Isser Dubinsky, Bev Heim-Myers, Valerie Hussey, Eva Kmiecic, Sherry Moran, Leigh Naturkach, Chantal Perrot, Bradley Peter, Fancy C. Poitras, Jonathan Reggler, Derryck Smith and Ryan Webster.

Ms. Gokool's History with DWDC

4. Ms. Gokool was hired by DWDC in the capacity of COO in July 2014. Her starting salary was \$67,000.

5. In May 2015, DWDC's then-CEO informed the Board that she intended to resign her position within the year. At that time, DWDC was in a precarious position: it had just lost its charitable status, was on the brink of insolvency and, with the anticipated passage of federal MAID legislation, was seemingly without a future mandate or purpose. In December 2015, the then-CEO informed the Board that DWDC would be out of money by April 2016. It was clear that whoever succeeded her as CEO was destined to inherit a rudderless organization on the brink of financial collapse.

6. At first, Ms. Gokool had no interest in taking on the CEO position and informed the Board that she did not wish to be considered for the role. However, when efforts to recruit a qualified CEO from outside the organization failed, the Board turned to Ms. Gokool as the only person dedicated enough to accept the daunting challenge of rebuilding the organization.

7. Ms. Gokool eventually accepted the position as CEO and signed a one year contract effective February 15, 2016. The contract provided her with a total compensation package of

\$78,000. By comparison, the departing (white) CEO's total compensation package including the rental of an apartment in Toronto for her exclusive use, was over \$130,000, notwithstanding the bleak state in which she left DWDC's finances.

8. Due to the precarious state of DWDC's finances when she took over, Ms. Gokool did not immediately replace herself as COO. Instead, for almost a year, she performed both roles and saved the organization an additional \$67,000. Nonetheless, between 2015 and 2018, Ms. Gokool remained a Major Donor to DWDC and steadily increased her donation each year.

9. Over the following years, Ms. Gokool poured her time, intellectual property and creative energy into rebuilding DWDC into an internationally-respected human rights organization. With the assistance of a highly-dedicated staff, Ms. Gokool systematically reconstructed DWDC's mandate and finances.

10. Under Ms. Gokool's leadership, DWDC's monthly donor program grew from taking in just \$33,000/month from 75 donors in 2015, to a forecasted total of \$350,000/month from 1,300 donors in 2019. Similarly, DWDC's supporter list grew from approximately 8,000 in January 2016 to over 45,000 in 2019.

11. Ms. Gokool also dedicated herself to building relationships with existing and potential major donors. These efforts resulted in dramatic changes to the organization's finances through a marked uptick in major gifts. Most notably, in July 2017, DWDC was notified of a \$7.75 million bequest from the estate of Dave Jackson (**"Jackson bequest"**), a major donor with whom Ms. Gokool had built a strong, personal relationship. Thanks to his bequest, DWDC was able to stop living hand to mouth and build the foundation for a secure operational future. Another key relationship stewarded by Ms. Gokool resulted in an additional bequest of \$500,000 in early 2019.

12. In addition, through Ms. Gokool's dogged efforts and her expertise in human rights, DWDC succeeded in regaining its charitable status in 2018 - despite initial legal advice that it would be all but impossible to do so. The renewal of its charitable status resulted in hundreds of thousands of dollars in additional benefits to DWDC.

13. Under Ms. Gokool's leadership, DWDC became active in three court challenges and coined new human rights language that opened up innovative new avenues for political and legal advocacy. These ground-breaking concepts, including "forced transfers" and categorizing people as "assessed and approved" for MAID before they lose capacity, were the direct products of Ms. Gokool's creative thinking human rights approach to assisted dying. These concepts have since been adopted nationally and internationally by academics, clinicians, lawyers, and others in the right to die movement.

14. Furthermore, Ms. Gokool expanded DWDC's Personal Support Program for counseling and bereavement to include patient navigation for medical assistance in dying. At the behest of grass roots DWDC Chapter volunteers in the summer of 2016, DWDC also initiated a national volunteer witness program for people making requests for MAID. This program has supported between 15-18% of all MAID requests in Canada. Under her direction in 2017, DWDC also launched an online education webinar series, End of Mind, which has helped inform thousands of Canadians about MAID, end of life rights, and the importance of advanced care planning.

15. Ms. Gokool's efforts have profoundly impacted how Canadians experience and speak about death and dying. Under her leadership, DWDC critically redefined the role it plays in the courts, legislatures, and in public discourse. She used her human rights lens to create the values-

based, ethical framework now used by DWDC to put the best interests of dying Canadians first and foremost in its work.

16. Thus, despite being under-resourced, under-paid, and repeatedly undermined by the Board, Ms. Gokool steadily rebuilt DWDC into a credible, prestigious and financially-secure human rights organization.

DWDC Undervalued and Undercompensated Ms. Gokool for Her Work

17. As Ms. Gokool led a dramatic turnaround in DWDC's reputation and finances through her sweat equity and exceptional dedication, her compensation was increased only modestly, and often begrudgingly, by the Board.

18. In January 2017, without first conducting a formal performance review, the Board extended Ms. Gokool's contract and increased her salary to \$88,000/year. This increase was prompted primarily by efforts to recruit a new COO at a pay range potentially above \$78,000 and marked the beginning of a pattern in which the Board only turned its mind to reviewing Ms. Gokool's compensation when it wanted to pay someone else more than it was already paying her. This pattern reflected an ingrained attitude towards Ms. Gokool's labour that suggested the Board viewed it as less valuable than the labour of her newly-hired colleagues and thus felt entitled to take it for granted.

19. The Board later approved a second modest increase to Ms. Gokool's salary to \$98,000 effective January 1, 2018, again without conducting a performance review or offering Ms. Gokool any formal feedback. As before, this increase was prompted by the fact DWDC was seeking to recruit a new COO at a rate of pay potentially higher than it was paying to Ms. Gokool.

20. Concurrently, the Board also approved a \$10,000 bonus to Ms. Gokool for the work she performed in 2017. To ensure DWDC's staff also received a bonus for 2017 (as paid to the team in January 2018), Ms. Gokool asked to defer collection of her bonus until the Jackson bequest came in. A \$10,000 bonus was eventually paid to Ms. Gokool in June 2018.

21. Despite these increases, Ms. Gokool continued to earn significantly less than the former (white) CEO – who had stewarded DWDC into its financial crisis – nearly three years into her own successful tenure.

Systemic Discrimination against Ms. Gokool

22. Despite her strong track record of success, DWDC's Board continuously denied Ms. Gokool the credibility and respect enjoyed by her (white) predecessor. Instead, it subjected her to a pattern of disrespectful and often humiliating behaviour designed to undermine, appropriate or second-guess her work. Over time, it became clear that DWDC's Board was simply incapable of providing a woman of colour the respect or compensation that she objectively deserved.

23. Select examples of the Board's disrespectful and devaluing conduct towards Ms. Gokool include:

- (a) failing to revisit Ms. Gokool's compensation in August 2018, in accordance with its contractual obligations toward her and in the context of DWDC's substantially improved financial picture following the Jackson bequest;
- (b) subjecting Ms. Gokool to differential treatment with respect to retroactive pay adjustments for 2018, which were provided to every member of DWDC's staff in October 2018 except Ms. Gokool;

- (c) neglecting to support the recruitment of an appropriate candidate to replace Ms. Gokool as COO for more than two years, thus tacitly discounting the work Ms. Gokool did in her previous position;
- (d) blaming Ms. Gokool for her inability to carry out the duties of both a COO and a CEO simultaneously;
- (e) deliberately excluding Ms. Gokool from key decisions surrounding the future of DWDC's leadership;
- (f) deliberately undermining Ms. Gokool's credibility and authority with DWDC's staff;
- (g) subjecting Ms. Gokool to a pattern of dismissive, condescending and inaccurate communication, and refusing to provide necessary classification and guidance concerning the respective responsibilities of Board and staff;
- (h) failing to provide Ms. Gokool with timely, necessary and/or reliable information about Board decisions;
- (i) recruiting (and supporting the recruitment of) a white, male COO at a greater salary than the salary paid to Ms. Gokool herself, and then failing to take timely steps to rectify the pay gap between them. To the contrary, the Board summarily and repeatedly dismissed Ms. Gokool's concerns about compensation levels and explicitly took the position that it was fine for her to be compensated at the same level as the new white, male COO, despite her seniority and years of exemplary service to DWDC;

- (j) recruiting (and supporting the recruitment of) a (white) Director of Major Gifts at a higher annual salary than Ms. Gokool;
- (k) subjecting Ms. Gokool to a pattern of harassing and belittling communication, which was often copied to her staff in a bid to further undermine her authority;
- (l) subjecting Ms. Gokool to reprisal after she asserted her rights under the *Employment Standards Act* in February 2019;
- (m) thwarting Ms. Gokool's efforts to secure an appropriate executive coach, despite the Board's formal approval of executive coaching support in May 2018. In the face of the Board's inaction and ineptitude on this issue, Ms. Gokool eventually retained her own coach, at her own expense, in January 2019.

24. In February 2018, Ms. Gokool began to raise a number of issues with the Board's Executive Committee (then consisting of former Chair Jack Pasht, current-Chair Jim Cowan, and Eva Kmiecic). Primarily, these concerns centered around communication shortfalls between the Board and staff, as well as a lack of clarity concerning their respective roles and responsibilities.

25. Ms. Gokool also emphasized to them the importance of consulting her, as CEO, about key decisions regarding the future of the organization's leadership. In particular, Ms. Gokool was alarmed by the failure to consult her about the decision to appoint Isser Dubinsky as Vice-Chair. The most critical relationship within a non-profit like DWDC is the relationship between the CEO and the Chair. Ms. Gokool was not supportive of Mr. Dubinsky as DWDC's future Chair. In the months that followed, many of DWDC's Directors, including Mr. Cowan, Mr. Peter and Ms.

Naturkach, privately expressed their own doubts about Mr. Dubinsky's suitability to Ms. Gokool, both verbally and in writing.

26. At its annual retreat in May 2018, the Board admitted to Ms. Gokool that it had failed to support her leadership at DWDC. In an effort to rectify this and demonstrate its support, the Board made two specific commitments to Ms. Gokool. First, following two failed attempts to secure a new COO, the Board committed to hiring an executive search firm ("**executive search firm**") to assist with recruitment, in the hopes that a broader pool of candidates would finally lead DWDC to the right professional.

27. Second, the Board committed to retain an executive coach to support her in her role as CEO. This commitment was intended to demonstrate its willingness to invest in Ms. Gokool and help her become the best CEO possible.

28. At this retreat, the Board also appointed a new Executive Committee (composed of now-Chair James Cowan, Veronica Dolenc, Isser Dubinsky and Eva Kmiecic) (hereinafter the "**Executive Committee**") to work with Ms. Gokool and make decisions between the Board's quarterly meetings. This structure injected an intermediary layer between Ms. Gokool and the full Board and hindered her ability to obtain meaningful instructions on urgent issues. It also hindered her ability to interface with the whole Board and prevented her from ensuring they were fully briefed on key issues as they arose.

29. In June 2018, after DWDC received the first part of the Jackson bequest, Ms. Gokool reminded the Board of its commitment to revisit her compensation. Concurrently, the executive search firm advised Ms. Gokool that DWDC would need to advertise a salary range of \$110,000 to \$125,000 in order to attract an appropriate candidate for the COO role. When Ms. Gokool asked

for the executive search firm's advice on the appropriate salary range for her position, they suggested \$180,000 to \$250,000, with an average salary of \$220,000. At the time, Ms. Gokool's salary remained just \$98,000.

30. When Ms. Gokool reported the executive search firm's advice on the appropriate salary range for the COO position to the Executive Committee on August 24, 2019, Veronica Dolenc pointed out that Ms. Gokool was not even being paid in that range. Other Executive Committee members quickly dismissed the concern and declared it would be fine for the CEO and COO to be paid the same. One even commented that the new COO would really be a co-CEO in any event. Nonetheless, the Executive Committee minutes from this meeting state that the CEO's salary requires a "timely" adjustment. Efforts to make this "timely" adjustment did not follow, notwithstanding DWDC's contractual and moral obligations to Ms. Gokool.

31. At the direction of the Executive Committee, DWDC began efforts to recruit a new COO at a salary level in excess of Ms. Gokool's salary.

32. On July 31, the Board presented Ms. Gokool with an executive coaching proposal from Verity International. Ms. Kmiecic pressured her to sign immediately. In response, Ms. Gokool expressed some hesitation about signing on without first meeting her proposed coach. She was also concerned that the proposal focused more on reporting to the Board than offering her support. The whole process felt rushed and like she was being set up to fail. Ms. Gokool suggested they revisit the proposal, along with other options, once a new COO was in place and her workload eased.

33. On October 3, 2018, Ms. Gokool, along with two DWDC staff members, met with Mr. Cowan and Ms. Naturkach to discuss various issues with Board/staff relations. During this

meeting, Ms. Gokool raised concerns about systemic discrimination in respect of her salary. Mr. Cowan immediately recoiled at her comments and insisted there was ‘no intent to discriminate’.

34. Mr. Cowan subsequently encouraged Ms. Gokool to find an executive coach she trusted and believed she could work with. He told her to bring a proposal to the next Executive Committee meeting for approval.

35. Ms. Gokool sought out recommendations and interviewed three candidates to serve as her coach. She settled on Dave Farthing, who offered particular expertise in conflict management and seemed like a great fit. However, when Ms. Gokool brought the proposal to the Executive Committee in late November as directed, Isser Dubinsky objected to Ms. Gokool selecting her own coach. Mr. Farthing’s proposal was therefore rejected.

36. Instead, Ms. Gokool was told that Mr. Dubinsky would prepare an RFP soliciting potential proposals from coaches. Mr. Dubinsky requested that Ms. Gokool provide a list of skills she hoped to gain from executive coaching, and told her that he and Mr. Cowan would provide her with a list of what the Board wanted Ms. Gokool to learn. Ms. Gokool provided that list to Mr. Cowan in early February 2019, but never received a reciprocal list from Mr. Dubinsky and/or Mr. Cowan.

37. In November 2018, DWDC hired a new (white male) COO, Cameron Dunkin, and immediately agreed to pay him \$12,000 more than Ms. Gokool. As Mr. Dunkin’s duties included supervising payroll and supporting budget development, he was immediately aware that he was earning more than his boss, Ms. Gokool.

38. In response to Ms. Gokool's repeatedly-voiced concerns about her salary and the disparity with Mr. Dunkin, Mr. Cowan advised her in November 2018 that the Board needed to conduct a formal performance review before it could revisit her compensation. Although Ms. Gokool agreed that she was overdue for a performance review, she objected to the idea that the Board could not engage in preliminary salary discussions until the performance review was complete. In addition, she repeatedly encouraged the Board to conduct an environmental scan of the sector and familiarize itself with the appropriate salary range for a CEO in her position. It took no steps to do so.

39. On January 6, 2019, Mr. Cowan informed Ms. Gokool that the Board would not be retroactively adjusting her salary to June 2018 – despite the fact it had done so for the rest of the staff – due to “difficult personalities” on the Executive Committee (referring, presumably, to Mr. Dubinsky and Ms. Kmiecic). He offered no explanation for the decision to treat her differently than the rest of the staff, but simply insisted that the Board would pay the difference via bonus instead.

40. Shortly thereafter, DWDC hired a (white) Director of Major Gifts. Guided by the salary range provided by the executive search firm and Ms. Naturkach, the position paid \$150,000 on a three days/week prorated basis. There were now two (white) employees at DWDC paid more than the CEO, to whom they both reported.

41. Eight months after the Board's pledge to provide her with coaching support, the Executive Committee continued to obstruct the selection process. As Ms. Gokool was desperate for guidance and support on the salary situation, she reached out to Mr. Farthing and personally retained him to coach her through her negotiations with the Board.

42. In February 2019, Ms. Gokool felt increasingly anxious and depressed. She began experiencing difficulties with sleep and concentration. Feeling bullied, demeaned, humiliated and discriminated against by DWDC's Board, she began seeking advice and treatment from her family doctor.

43. On February 13 and 14, 2019, the Board made Ms. Gokool two unacceptable compensation offers (and only after Ms. Naturkach intervened on her behalf, and raised the issue of systemic discrimination directly with Mr. Cowan and Ms. Kmiecic). The first offer would have seen Ms. Gokool receive a lesser annual salary than the Director of Major Gifts. The second offer was at odds with the requirements of the *Employment Standards Act*.

44. On February 20, 2019, Ms. Gokool sent the Executive Committee a letter reiterating her concerns about systemic bias in the salary negotiations and issues arising from the ongoing dysfunction between Board members and staff. She explicitly asked for her letter to be circulated to the entire Board. This was not done.

45. Over the course of the following week, Ms. Gokool received a series of harassing, berating and humiliating emails from Ms. Kmiecic, seemingly in retaliation for the February 20, 2019 letter. Ms. Gokool was eventually forced to call Mr. Cowan and insist that he intervene to put a stop to her bullying. Ms. Gokool also informed Mr. Peter and Ms. Naturkach about the impacts the harassment and bullying were having on her health.

46. Later that day, Ms. Gokool saw her family doctor in tears. She was emotionally and physically exhausted, and felt like she could not continue in such a toxic environment. Her family doctor insisted she take a one month's medical leave to March 29, 2019, to distance herself from the Executive Committee's conduct and attend to her emotional and physical health.

47. While Ms. Gokool was off on medical leave, Mr. Dubinsky attended at DWDC's offices and coerced Mr. Dunkin, the new COO, into helping him prepare an RFP to secure an executive coach for Ms. Gokool. Without consulting Ms. Gokool or getting direction from the Board, Mr. Dubinsky directed Mr. Dunkin to send the RFP to two specific coaches, one of whom Ms. Gokool had previously flagged to the Executive Committee as untrustworthy. The process was therefore disingenuous and designed to force Mr. Dubinsky's choice upon Ms. Gokool. Mr. Dubinsky later informed Ms. Gokool that he expected his hand-picked coach to report to the Board on a monthly basis.

48. On March 29, 2019 – just before her return from medical leave – DWDC made Ms. Gokool a new compensation offer, which included a base salary of \$165,000/year. This was the first offer that even approached the \$180,000 - \$250,000 range suggested by the executive search firm. Although Ms. Gokool was prepared to accept the base salary proposed, other aspects of the offer, including the termination clause, remained deficient. Regrettably, further efforts to address these issues with the Executive Committee proved futile. Negotiations were at an impasse, leaving Ms. Gokool – who was just back from mental health leave – in an extremely vulnerable position.

49. On April 29, 2019, Ms. Gokool finally received the results of her performance appraisal. Aside from a couple of obvious detractors, the feedback provided to Ms. Gokool was overwhelmingly positive. It was clear that DWDC's reluctance to bring her compensation in line with her peers – both within the organization and the sector more broadly – was entirely unrelated to her performance. Rather, it was a manifestation of a predominately all-white Board's subconscious belief that her work was inherently less valuable than that of her white peers.

50. By this time, Ms. Gokool felt thoroughly humiliated and disempowered by the months of discrimination, disrespect and abuse. Despite the continued deficiencies in terms, Ms. Gokool felt she had no choice but to accept DWDC's offer and bring salary negotiations to a close, as she could not raise the issue of their discriminatory treatment towards her while she remained in such a vulnerable position. Under duress, she signed the new contract on April 29, 2019.

51. On May 14, 2019, Ms. Gokool sent a letter to the entire Board detailing her concerns about systemic bias and discrimination within DWDC and expressing her desire to address and resolve them in good faith. She requested a mediated process with the entire Board aimed at rebuilding the trust and confidence of all parties and proposed constructive steps to move the process forward.

52. At first, the Board's response to Ms. Gokool's letter was positive. On May 25, 2019, it voted to dissolve the Executive Committee, which had been the source of numerous governance issues and communication barriers. After some initial resistance, Ms. Gokool was also permitted to address the entire Board in person about the concerns expressed in her letter during its annual Board retreat. In response to Mr. Cowan's suggestion that she should focus on the future rather than dwell on the past, Ms. Gokool made it clear to all in attendance that the circumstances which created and sustained the systemic bias she experienced were still very much in the present. She further warned that the Board's failure to address her concerns in a meaningful way would place DWDC and its staff in ongoing jeopardy in the future.

53. On May 25, 2019, Mr. Dubinsky pulled Ms. Gokool aside and chided her for not getting "her facts" directly from him. He told her that if she had spoken to him before sending the letter to the Board, her level of emotional upset would have been "modulated". Mr. Dubinsky's

comments were patronizing, tone deaf and dismissive of the grave allegations of systemic discrimination she raised to the Board just the day before.

54. Thereafter, the Board engaged external legal counsel to meet with Ms. Gokool and devise a plan to address her concerns. Ms. Gokool was repeatedly assured that the Board was committed to a good faith process. DWDC's external legal counsel ("**counsel**") also assured Ms. Gokool that her mandate was to address the serious concerns raised in her letter.

55. In this context, Ms. Gokool agreed to have a candid discussion with external counsel to address how matters might be resolved to everyone's satisfaction. She subsequently had a lengthy conversation with Bev Heim-Meyers, in her capacity as Chair of the Board's Human Resources Committee, in the spirit of good faith reconciliation. Although concerned by some of Ms. Heim-Meyers' comments, Ms. Gokool was optimistic that relations could be mended through mediation and believed that things were finally moving in a positive and constructive direction.

DWDC's Wrongful Termination of Ms. Gokool

56. In mid-July 2019, Ms. Gokool received an email from Ms. Heim-Meyers unilaterally informing her that she was required to attend a Human Resources Committee meeting on Monday, July 22, 2019 at 5:00 p.m. As Ms. Heim-Meyers undoubtedly knew, Ms. Gokool was scheduled to be on vacation that day. Ms. Gokool asked that the meeting be rescheduled to a date convenient to everyone. Ms. Heim-Meyers responded by moving the meeting to 8:30 a.m. the following day.

57. On Tuesday, July 23, 2019, Ms. Gokool attended for the supposed meeting, only to discover that the meeting was in fact a ruse. She was informed that she was being terminated, without cause, from her position as CEO of DWDC. Ms. Gokool later learned that the Board had

planned her termination in cooperation with Mr. Dunkin – the same new (white male) COO who DWDC had paid more than her for the first quarter of 2019.

58. After informing Ms. Gokool of her termination, Ms. Heim-Meyers demanded her credit card and office key and immediately escorted her from the premises, without permitting her an opportunity to say goodbye to the dedicated staff who worked tirelessly alongside her for years.

59. DWDC issued a statement related to Ms. Gokool's departure to members and supporters on July 25, 2019. The abrupt tone of the statement, coupled with the factual inaccuracies contained therein and DWDC's failure to wish Ms. Gokool well, led many in the assisted dying community to infer that Ms. Gokool had done something very wrong and been abruptly terminated for cause. In creating this impression, DWDC tarnished Ms. Gokool's reputation, demeaned her contribution, and caused her additional and unnecessary stress and suffering.

60. On July 25, 2019, DWDC abruptly cut off Ms. Gokool's health and dental benefits, in disregard for her chronic health issues and in violation of the *Employment Standards Act*. Following a complaint, her benefits were eventually restored on August 7, 2019.

61. On July 31, 2019, three members of DWDC's Board – Isser Dubinsky, Bev Heim-Meyers and Leigh Naturkach – met with DWDC's staff and encouraged them to have a free for all discussion about any issues or complaints they had with Ms. Gokool as CEO. The staff was encouraged to advance allegations that Ms. Gokool had created a toxic work environment, in an effort to retroactively justify the Board's decision to terminate her.

62. DWDC also made it very difficult for Ms. Gokool to collect her personal items from her office. In particular, two very personal keepsakes from her work at DWDC were withheld until the end of August 2019, despite DWDC's knowledge of their specific importance to her.

63. The Board terminated Ms. Gokool without addressing, investigating or resolving her allegations of systemic discrimination and bias. Further, it proceeded with her termination in reckless disregard for the issues giving rise to her medical leave. DWDC made its decision heedless of the moral obligations incumbent upon an organization founded on the principles of dignity and human rights.

Liability for Breach of Contract/Wrongful Dismissal

64. Ms. Gokool was a loyal and diligent employee of DWDC notwithstanding the numerous financial, structural and cultural challenges she faced. It was her first executive position and an important, career-building opportunity. As outlined above, Ms. Gokool demonstrated exceptional commitment to the role and produced extraordinary results.

65. Ms. Gokool's compensation at the time of termination included, but was not limited to:

- (a) salary of approximately \$165,000 per annum;
- (b) participation in a group benefits plan;
- (c) participation in a matching 4% RRSP program;
- (d) monthly cell phone subsidy of \$100;
- (e) an annual performance bonus; and

- (f) approximately 5 weeks vacation per annum. (Collectively, “**Total Compensation**”)

66. It was an implied term of Ms. Gokool’s employment contract that DWDC would provide reasonable notice of termination in the absence of just cause. As Ms. Gokool did not receive reasonable notice or pay in lieu thereof, she was wrongfully dismissed.

67. Ms. Gokool is entitled to an award of damages equal to twenty-four months of her Total Compensation. A notice period of this length is appropriate based on Ms. Gokool’s age, years of experience, and the scarcity of comparable employment opportunities in Ontario, or even Canada.

68. Ms. Gokool is also entitled to all amounts owing to her pursuant to the *Employment Standards Act*, including any unpaid severance and termination pay.

Liability for Systemic Bias and Discrimination

69. It was also an implied term of Ms. Gokool’s employment agreement that:

- (a) the defendant would provide her with a safe workplace, free from discrimination and harassment in compliance with applicable legislative requirements; and
- (b) she would be treated with civility, decency and respect in all of their dealings and would not be subject to abusive conduct.

70. Among other things, DWDC’s conduct towards Ms. Gokool – and, in particular, the conduct of Mr. Cowan, Mr. Dubinsky, Ms. Kmiecic, Ms. Heim-Meyers and the other members of the Executive Committee – constituted a breach of Ms. Gokool’s right to be free from

discrimination on the basis of sex, race and country of origin in employment, pursuant to section 5 of the *Human Rights Code*, R.S.O. 1990, c. H. 19 (the “**Code**”).

71. DWDC knew, or reasonably ought to have known, that its actions violated Ms. Gokool’s right to safety, security and dignity in the workplace. Ms. Gokool is accordingly entitled to damages for injury to dignity, feelings and self-respect in accordance with s. 46.1 of the Code.

72. Further, DWDC terminated Ms. Gokool in direct retaliation for her decision to raise allegations of systemic bias and discrimination and her insistence at having her concerns substantively and constructively addressed. As such, DWDC’s actions constitute a breach of section 8 of the Code. Ms. Gokool is entitled to damages accordingly.

The Defendant’s Bad Faith Conduct

73. In addition to wrongfully dismissing Ms. Gokool, the defendant breached its duty of good faith in the manner of Ms. Gokool’s termination. The particulars of this breach include, but are not limited to:

- (a) failing to take any steps to investigate her repeated and sustained allegations of systemic discrimination;
- (b) inducing her to confide in DWDC’s external counsel, under the guise of a good faith restoration process;
- (c) inducing her to confide in Ms. Heim-Myers, also under the guise of a good faith restoration process;

- (d) using the information elicited through this process as the basis to terminate her employment;
- (e) pre-emptively informing Mr. Dunkin of her termination, and involving him in its execution;
- (f) attempting to terminate her on a rare day off;
- (g) denying her the opportunity to say goodbye to her staff;
- (h) issuing a vague, inaccurate and terse announcement in respect of Ms. Gokool's departure, leading many to infer that she had engaged in misconduct and been terminated for cause;
- (i) prematurely terminating her benefits, notwithstanding her chronic health issues, thus causing her significant additional stress;
- (j) withholding vacation pay earned by Ms. Gokool in the first seven months of 2019;
- (k) withholding cherished personal items;
- (l) meeting with DWDC's staff and encouraging them to make after-the-fact allegations against Ms. Gokool; and
- (m) implying to numerous donors and supporters that Ms. Gokool was terminated for issues invoking under-performance, incompetence and/or misconduct.

Special Damages

74. As a result of the defendant's wrongful conduct, Ms. Gokool has incurred out-of-pocket expenses in connection with her attempts to mitigate her losses and obtain alternate, comparable employment, as well as in connection with her efforts to address the emotional and psychological injuries inflicted by the defendants. The full particulars will be provided prior to trial.

Aggravated and Punitive Damages

75. DWDC flagrantly breached its duties to Ms. Gokool through the conduct described above. The calculated and financially exploitative nature of its conduct, which inflicted significant emotional, financial and psychological harm on Ms. Gokool, warrants punishment and entitles Ms. Gokool to a substantial award of aggravated and punitive damages.

Statutes Relied Upon

76. Ms. Gokool pleads and relies upon the *Human Rights Code*, RSO 1990, C.H.19, the *Employment Standards Act*, 2000, SO 2000, c. 41, as amended, and the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1.

77. Ms. Gokool proposes that this action be tried in the City of Toronto, Ontario.

October 15, 2019

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Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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